United Nations Convention on the Law of the Sea SPLOS/203

# Meeting of States Parties

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**Nineteenth Meeting**
New York, 22-26 June 2009

## Report of the nineteenth Meeting of States Parties

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# I. Introduction

1. The nineteenth Meeting of States Parties to the United Nations Convention on the Law of the Sea[1] was held in New York from 22 to 26 June 2009, in accordance with article 319, paragraph 2 (e), of the Convention and the decision taken by the General Assembly at its sixty-third session (resolution 63/111, para. 28).

2. In accordance with rule 5 of the Rules of Procedure for Meetings of States Parties (SPLOS/2/Rev.4), invitations to participate in the Meeting were addressed by the Secretary-General of the United Nations to all States parties to the Convention. In conformity with rules 18 and 37 of the Rules of Procedure, invitations were also addressed to observers, including States that have signed the Convention, States Members of the United Nations or members of specialized agencies of the United Nations system or the International Atomic Energy Agency, the President and the Registrar of the International Tribunal for the Law of the Sea, the Secretary-General of the International Seabed Authority and the Chairman of the Commission on the Limits of the Continental Shelf.

# II. Organization of work

## A. Opening of the Meeting and election of officers

3. Yuriy Sergeyev (Ukraine), President of the eighteenth Meeting, opened the nineteenth Meeting.

4. The Meeting elected Somduth Soborun (Mauritius) President of the nineteenth Meeting of States Parties, by acclamation.

5. The Meeting elected Bae Byeong-Soo (Republic of Korea), Eden Charles (Trinidad and Tobago), Emilena Popova (Bulgaria) and Scott Sheeran (New Zealand) as Vice-Presidents, by acclamation.

6. The President invited the Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations to address the Meeting.

**Statement by the Legal Counsel**

7. The Legal Counsel, Patricia O'Brien, made a statement in which she expressed satisfaction at the increase in the number of States parties to the Convention and noted that the Meeting provided an opportunity for States parties to be informed by the President of the Tribunal, the Secretary-General of the Authority and the Chairman of the Commission of recent developments in those bodies, as well as to discuss issues of a general nature that had arisen in respect of the Convention. She also recalled the tenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, held in New York from 17 to 19 June 2009, and drew the attention of delegations to the impact on the Commission, as well as on the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs, of the workload relating to the recent deposit of 39 new submissions and of 43 sets of preliminary information made pursuant to the decision

[1] United Nations, *Treaty Series*, vol. 1833, No. 31363.

taken by the eighteenth Meeting.[2] She expressed her confidence that the Meeting would contribute to promoting the uniform and consistent application of the Convention and ensuring the peaceful use of the seas and oceans, equitable and efficient utilization of their resources and study, protection and preservation of the marine environment.

**Introductory remarks by the President**

8. The President welcomed the new parties to the Convention, namely the Congo, Liberia and Switzerland, and recalled that the total number of States parties, including the European Community, as at 22 June 2009, had reached 158.

9. The President stressed the goal of universal participation in the Convention that had been established by the General Assembly. He emphasized that a strong and universally supported and implemented international legal regime for the oceans was essential both for the maintenance of international peace and security and for the sustainable use of ocean resources, navigation and protection of the marine environment. The President noted that on 8 June 2009 the United Nations had observed for the first time World Ocean Day, focusing on the theme "Our oceans, our responsibility". He underlined the importance of that theme to the deliberations of the Meeting of States Parties, recalling that the main purpose of the legal order established under the Convention, as stated in its preamble, was to "facilitate international communication, and ... promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment".

## B. Adoption of the agenda and organization of work

10. The President drew the attention of the Meeting to the provisional agenda (SPLOS/L.59), as well as to documents SPLOS/L.60, entitled "List of supplementary items proposed for inclusion in the agenda of the nineteenth Meeting of States Parties", and SPLOS/196, entitled "Proposal for the inclusion of a supplementary item in the agenda of the nineteenth Meeting of States Parties: note verbale dated 21 May 2009 from the Permanent Mission of China to the United Nations addressed to the Secretary-General".

11. The representative of China introduced the proposal contained in document SPLOS/196, explaining that the issue was being raised in a general context and not with the intention of reaching an agreement on the interpretation of the Convention. Divergent views were expressed with regard to the inclusion of the supplementary item in the agenda. Some delegations spoke in favour, expressing the view that the Meeting should not confine itself to discussing budgetary and administrative matters. In that connection, several delegations observed that interpreting the Convention was one of the prerogatives of the Meeting of States Parties. It was also recalled that the Meeting had already adopted decisions that amounted to an interpretation of the Convention.

[2] SPLOS/183. For a list of submissions and preliminary information received by the Secretary-General since the eighteenth Meeting of States Parties, see SPLOS/INF/22 and Corr.1 and Corr.2 and SPLOS/INF/22/Add.1.

12. Moreover, it was pointed out that the Meeting, by addressing the proposed item, would provide guidance to the Commission on a legal issue that was beyond the scientific and technical mandate of the Commission. In that connection, reference was made to the statement of the Chairman of the Commission on the progress of work at its twenty-third session, in which the Commission had acknowledged that "it has no role on matters relating to the legal interpretation of article 121 of the Convention, [and] decided that it would revert to the matter when it was ready to proceed with the establishment of the subcommission [...] taking into account any further developments that might occur during the intervening period" (CLCS/62, para. 59).

13. Other delegations opposed the inclusion of the additional item. They were of the view that the mandate of the Meeting of States Parties was to deal with administrative and budgetary issues. These delegations emphasized that the Meeting should not engage in the interpretation of the Convention. It was also observed that the Convention contained appropriate mechanisms that could be resorted to for the interpretation of its provisions. A view was expressed that it would be inappropriate for the Meeting of States Parties to advise on the work of the Commission, which was an independent body.

14. Despite the divergent views, all delegations concurred that in considering the proposed additional agenda item the Meeting should proceed by way of consensus.

15. Following informal consultations under the guidance of the President, the Meeting agreed to defer the consideration on the inclusion of the proposed agenda item to a future Meeting. It also agreed that no decision on the inclusion of the item in the agenda of the nineteenth Meeting would be taken and that an exchange of views would be conducted under relevant existing items, including agenda item 15.[3]

16. The Meeting adopted the agenda as outlined in document SPLOS/197, on the understanding that the order of items on the agenda was without prejudice to the order in which they would be discussed.

17. Following consultations with the Bureau, the President made proposals regarding the organization of work, which had been prepared taking into account the relevant decision of the eighteenth Meeting (SPLOS/182). The Meeting then approved the organization of work, on the understanding that it could be adjusted as necessary in order to ensure the efficient conduct of the discussions.

# III. Credentials Committee

## A. Appointment of the Committee

18. On 22 June 2009, pursuant to rule 14 of its Rules of Procedure, the Meeting appointed a Credentials Committee consisting of the following nine States parties: Angola, Argentina, Brazil, Finland, Indonesia, Kenya, Malaysia, the Netherlands and Poland. The Committee held its meeting on 24 June 2009.

[3] Report of the Secretary-General under article 319 for the information of States parties on issues of a general nature, relevant to States parties, that have arisen with respect to the United Nations Convention on the Law of the Sea.

## B. Report of the Committee

19. On 26 June 2009, Ceta Noland (Netherlands), Chairperson of the Credentials Committee, introduced the report of the Committee (SPLOS/198). She indicated that the Committee had examined and accepted the credentials of representatives to the nineteenth Meeting from 128 parties to the Convention, including the European Community. She also requested that the Meeting accept the credentials of Jordan, which had been received after the issuance of the report. The Meeting then approved the report of the Committee and accepted the additional credentials of Jordan.[4]

# IV. Matters related to the International Tribunal for the Law of the Sea

## A. Report of the Tribunal for 2008

20. The President of the Tribunal, Judge José Luis Jesus, introduced the annual report for 2008 (SPLOS/191) and provided an overview of the work of the Tribunal during the two sessions held in 2008, namely the twenty-fifth session (3-14 March) and the twenty-sixth session (24 September-7 October), at which the Tribunal had dealt with a number of legal and judicial matters, as well as organizational and administrative issues.

21. Judge Jesus recalled that he had been elected President and Judge Helmut Türk Vice President for a three-year term at the twenty-sixth session. At the same session, the Tribunal had also elected Judge Tullio Treves as President of the Seabed Disputes Chamber. The Tribunal had reconstituted the Seabed Disputes Chamber, the Chamber of Summary Procedure, the Chamber of Fisheries Disputes, the Chamber for Marine Environment Disputes and the Chamber for Maritime Delimitation Disputes.

22. The President reported that the Tribunal had amended article 113, paragraph 3, and article 114 of its Rules of Procedure and adopted guidelines aimed at facilitating the implementation of its decisions in prompt release proceedings. In addition, the Tribunal had reviewed several reports prepared by the Registry to keep its members abreast of developments on ocean affairs and the law of the sea.

23. The President noted that parties to a dispute might request the Tribunal to establish a special ad hoc chamber and recalled that this option had been exercised by Chile and the European Community in the *Case concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific*. He informed the Meeting that the Special Chamber established for that case had extended the time limits for making preliminary objections until 1 January 2010 and maintained the rights of the Parties to the dispute to revive the proceedings at any time.

24. The President referred to the trust fund established by the General Assembly to assist developing States in settling disputes through the Tribunal and expressed

[4] Following the approval of the report of the Credentials Committee, the Secretariat received communications from the Congo, Guyana, Sierra Leone and Pakistan, informing it of their participation in the nineteenth Meeting of States Parties.

gratitude to Finland for its contribution to the fund. He informed the Meeting that Bulgaria and Estonia had recently become parties to the Agreement on the Privileges and Immunities of the Tribunal, bringing the total number of parties to 37, and reiterated the appeal made by the General Assembly in paragraph 37 of its resolution 63/111 to all States that had not done so to become parties to the Agreement.

25. In referring to the efforts of the Tribunal to disseminate knowledge about the dispute settlement mechanisms established under the Convention, the President of the Tribunal informed the Meeting that, in 2008, the Tribunal had organized, in cooperation with the International Foundation for the Law of the Sea, two regional workshops, namely in Bahrain and Buenos Aires. Another regional workshop was to be held in South Africa in the second half of 2009. He also noted that, in 2008 and 2009, government officials from five countries had benefited from the annual capacity-building and training programme on dispute settlement under the Convention that had been established by the Tribunal with support from the Nippon Foundation. Furthermore, in 2008, 16 participants from 15 countries had participated in the Tribunal's internship programme, nine of whom had benefited from the grant provided by the Korean Cooperation Agency (KOICA). The President of the Tribunal highlighted the holding of the summer academy of the International Foundation for the Law of the Sea, on the theme "Uses and protection of the sea: legal, economic and natural science perspectives", at the Tribunal's premises from 3 to 31 August 2008. The academy had provided 32 participants with an overview of matters relating to the law of the sea and maritime law. Another session was scheduled to be held from 26 July to 23 August 2009.

26. In the ensuing discussion, several delegations expressed appreciation for the important role of the Tribunal in the settlement of disputes related to the implementation of the law of the sea and called for a broader acceptance of the jurisdiction of the Tribunal. It was noted that just a few cases had been sent to the Tribunal and, therefore, more efforts should be made to encourage States to resort to the Tribunal. In response to a request for clarification, the President of the Tribunal indicated that pursuant to article 1, paragraph 3 of its Statute, the Tribunal could sit and exercise its functions away from its seat in Hamburg, Germany.

27. Delegations noted with satisfaction the capacity-building activities carried out by the Tribunal, including its regional workshops referred to above. In that connection, delegations expressed appreciation to the Nippon Foundation and KOICA for their financial support to the capacity-building activities of the Tribunal. Some delegations drew the attention of the Meeting to the overdue contributions to the Tribunal and urged States parties to make payments without delay to the budget of the Tribunal.

28. A concern was raised in connection with paragraph 52 of the annual report with regard to the competence of the Tribunal over disputes relating to the establishment of the outer limits of the continental shelf beyond 200 nautical miles.

29. Following the interventions, the Meeting took note with appreciation of the annual report of the Tribunal for 2008.

## B. Financial and budgetary matters

30. The President of the Tribunal introduced the financial and budgetary matters of the Tribunal, in particular the report of the external auditor and the report on budgetary matters for the financial period 2007-2008, and issues relating to the adjustment of the remuneration of members of the Tribunal.

31. The Meeting decided to conduct deliberations on issues pertaining to financial and budgetary matters in an open-ended working group chaired by the President, as provided for in rule 54 of the Rules of Procedure. All subsequent decisions by the Meeting relating to financial and budgetary matters of the Tribunal were taken on the basis of the recommendations of the working group.

### 1. Report of the external auditor for the financial period 2007-2008

32. The President introduced the report of the external auditor for the financial period 2007-2008, with financial statements of the Tribunal as at 31 December 2008 (SPLOS/192).

33. According to the auditors, the financial statements and transactions of the Tribunal were in compliance with its Financial Regulations and Rules, and the accounting principles had been applied by the Tribunal on a basis consistent with that of the preceding financial period.

34. In keeping with the request by some delegations at the sixteenth Meeting, the Tribunal had expedited the closure of the financial statements for 2007-2008. The audit report for the financial period 2007-2008 had been carefully considered by the Tribunal during its March 2009 session to ensure that it would be available in time for the nineteenth Meeting.

35. Delegations noted with satisfaction the conclusions reached by the external auditor.

36. The Meeting took note with appreciation of the report of the external auditors for the financial period 2007-2008.

### 2. Report on budgetary matters for the financial period 2007-2008

37. The President introduced the report of the Tribunal on budgetary matters for 2007-2008 (SPLOS/193), covering the issues outlined below.

#### Performance report for 2007-2008

38. The President recalled that the total expenditure for 2007-2008 amounted to €14,738,033, which represented 85.61 per cent of the approved appropriations. The underperformance was due primarily to savings achieved under the budget line "Case-related costs", as a result of the fact that two urgent cases, namely Case No. 14 ("Hoshinmaru") and Case No. 15 ("Tomimaru") had been submitted simultaneously in July 2007. As a consequence, both cases had been dealt with within one month, as prescribed by the Rules of the Tribunal, and not two months as would have been the case had the cases been filed separately. The President also explained how additional savings had occurred in 2008.

**Action taken pursuant to the decisions of the Meetings of States Parties on budgetary matters**

39. The President recalled that pursuant to the decision taken by the sixteenth Meeting (SPLOS/146) and the decision taken by the seventeenth Meeting (SPLOS/161), €312,684 and €626,385, respectively, had been surrendered and deducted from the contributions of States parties in accordance with Regulation 4.5 of the Financial Regulations of the Tribunal. Similarly, following the eighteenth Meeting, €1,232,340 had been deducted from the contributions of States parties for the 2009 budget of the Tribunal.

40. The President noted that, on the basis of the approved budget for the financial period 2007-2008, there was an overexpenditure in the budget line "Special services (external audit)" amounting to €700, owing to the fact that an interim audit had been conducted in February 2008 to certify the amount of the final cash surplus for the period 2005-2006. In accordance with rule 104.3 of the Financial Rules of the Tribunal, the amount of the overexpenditure was offset by the savings from other budget lines in the same section, "Operating expenditures".

41. The President also reported that, as a result of intensified efforts to collect contributions in arrears relating to the financial periods from 1996-1997 to 2005-2006, an additional amount of €784,136 would be surrendered to States parties. Pursuant to the Financial Rules of the Tribunal, that amount would form part of the cash surplus for the financial period 2007-2008 and would normally be surrendered after the final cash surplus had been determined at the beginning of 2010. However, he proposed that, since the amount was clearly identified and related to the previous financial periods, it could be surrendered and deducted from the contributions for 2010, in accordance with regulation 4 of the Financial Regulations of the Tribunal.

42. Following the presentation of the report, several delegations expressed concern regarding the arrears in assessed contributions and called upon States parties to honour their financial commitments and promptly pay outstanding contributions in full. The efforts of the Registrar to collect the arrears were welcomed.

43. The Meeting took note with appreciation of the report on budgetary matters of the Tribunal for the period 2007-2008 and, following the recommendations of the working group chaired by the President, decided that the amount of €784,136, corresponding to a part of the cash surplus for the financial period 2007-2008, would be surrendered and deducted from the assessed contributions of the States parties for 2010.

## 3. Adjustment of the remuneration of members of the Tribunal

44. The President of the Tribunal introduced the note by the Tribunal on the adjustment of the remuneration of members of the Tribunal (SPLOS/194), covering the issues outlined below.

**Remuneration**

45. The President recalled the decision taken at the fourth Meeting whereby the level of remuneration of the members of the Tribunal would be based on the principle of "maintaining equivalence with the remuneration levels of Judges of the International Court of Justice" (SPLOS/WP.3/Rev.1, para. 17, and SPLOS/L.1).

46. He also noted that the General Assembly, by its decision 62/547 of 3 April 2008, had set, effective 1 April 2008, the annual net base salary of judges of the International Court of Justice at US$ 158,000, "with a corresponding post adjustment multiplier equal to 1 per cent of the net base salary, to which would be applied the post adjustment multiplier for the Netherlands". The Assembly had also approved the adjustment mechanism referred to in the Secretary-General's report A/62/538, which would harmonize future revisions to the annual base salary of the judges at the International Court of Justice with revisions to be made to the base salary scale for staff in the professional and higher categories.

47. Accordingly, the Tribunal had proposed that the Meeting of States Parties take a decision to adjust the remuneration of the members of the Tribunal to reflect the revision of the emoluments of the members of the International Court of Justice, effective 1 January 2009.

48. The President explained that if the Meeting approved the proposals of the Tribunal, the remuneration of judges of the Tribunal would be expected to increase by an average of 7.12 per cent compared with that calculated under the floor/ceiling mechanism. Accordingly, an additional appropriation of €276,600 would be required to cover the corresponding increases in annual and special allowances for members of the Tribunal and compensation for judges ad hoc for the period from January 2009 to December 2010. He proposed that the Tribunal be authorized to use part of the cash surplus from the budget for 2007-2008 to finance the additional appropriation in light of the amount of the provisional cash surplus, which currently stood at €2,780,920.

**Pensions**

49. The President reported that the new system of remuneration adopted for the judges of the International Court of Justice had resulted in a decrease in their annual net base salary from US$ 170,080 (effective 1 January 2005) to US$ 158,000 (effective 1 April 2008), which would result in a reduction in the pensions of the judges. In order to avoid such a reduction, the General Assembly, in its resolution 63/259 of 24 December 2008, had endorsed the recommendations made by the Advisory Committee on Administrative and Budgetary Questions, with the result that the judges' pensionable remuneration would continue to be based upon the previous level of remuneration.

50. The President outlined the proposal of the Tribunal in relation to pensions, according to which, following the same approach applicable to the International Court of Justice and pursuant to the comparator principle, the retirement benefit of the members of the Tribunal would be 50 per cent of the annual salary (excluding post adjustment) or 50 per cent of the annual salary that would have been paid on the basis of the previous system of remuneration (in June 2005), whichever amount was higher. It was also proposed that a member of the Tribunal who was re-elected receive one three-hundredth of his/her retirement benefit for each further month of service beyond nine years, up to a maximum pension of two thirds of the annual net base salary, excluding post adjustment, and that the current system continue to be applied until the amount of maximum remuneration (US$ 170,080) was overtaken by a newly revised maximum annual remuneration.

51. Following the presentation of the document by the President of the Tribunal, mention was made of the decision adopted at the fifteenth Meeting (SPLOS/132),

whereby the Meeting of States Parties had decided, as an interim measure, to approve an adjustment of the maximum annual remuneration of the members of the Tribunal, as well as an adjustment of pensions in payment in accordance with article 7, paragraph 2, of the pension regulations for members of the Tribunal, and decided that the Registrar should report to the Meeting on all relevant implications concerning any action taken pursuant to that decision. The Registrar confirmed that the current proposal for the adjustment of the remuneration of members of the Tribunal and their pension was a follow-up to the decision adopted at the fifteenth meeting.

52. Clarification was sought regarding the proposal for modification of the pension scheme, in particular in respect of the maximum pension for a member of the Tribunal who was re-elected. The Registrar confirmed that pursuant to the proposal, the maximum pension would be calculated by reference to the annual net base salary of the members of the International Court of Justice.

53. While views were expressed in support of the Tribunal's proposal, questions were raised regarding the workload and working methods of the members of the Tribunal. In response to comments made, the Registrar recalled again the decision taken at the fourth Meeting concerning the principle of maintaining equivalence with the remuneration levels of judges of the International Court of Justice (see para. 45 above) and drew the attention of the Meeting to rule 41, paragraph 2, of the Rules of the Tribunal, according to which members shall hold themselves permanently available to exercise their functions and shall attend meetings of the Tribunal, except in specified cases, and to article 7 of the Statute of the Tribunal, concerning activities incompatible with appointment to the Tribunal.

54. Following the recommendations of the working group, the Meeting adopted a decision on adjustment of the remuneration of members of the Tribunal and their pension (SPLOS/200).

## V. Information on the activities of the International Seabed Authority

55. Nii Allotey Odunton, Secretary-General of the Authority, informed the Meeting of the activities carried out by the Authority during the past 12 months.

56. Notably, during the fifteenth session of the Authority, the Council had made further progress on the draft regulations on prospecting and exploration for polymetallic sulphides. The Secretary-General expressed the view that it would be possible to complete the regulations at the next session in 2010. He also informed the Meeting that at the fifteenth session the International Cable Protection Committee had made a presentation to the Council on submarine cables in the deep sea.

57. The Secretary-General reported that the Legal and Technical Commission had concluded its work on draft regulations for cobalt-rich ferromanganese crusts and decided to forward the draft to the Council for its consideration in 2010. The Commission had adopted new recommendations for contractors of the Authority on the reporting of actual and direct exploration expenditures under contracts with the Authority.

58. He added that the Commission had also considered the proposal to establish a network of nine areas in the Clarion-Clipperton Zone that would be protected from mining activity and used to assess the impact of mining in other areas on the deep-sea environment.

59. The Secretary-General highlighted a number of other activities of the Authority. The project to establish a geological model for the Clarion-Clipperton Zone was near completion, and the Authority planned to convene a workshop to present the results of the project in 2009. The Authority's Endowment Fund for Marine Scientific Research, established in 2006, had supported a number of qualified scientists and technical personnel from developing countries in international technical and scientific cooperation programmes. Noting that there was a great demand in developing countries for support with respect to marine scientific research, the Secretary-General appealed for further contributions to the Fund. He also expressed his appreciation for the forthcoming contribution by Norway to the Fund in the amount of $250,000.

60. Recent steps by the Authority to convene regional sensitization seminars were also highlighted. The first seminar had been held in Indonesia in 2007, followed by seminars in Rio de Janeiro in 2008 and in Abuja in February 2009. The response to those seminars had been encouraging and the Authority would convene similar seminars in other regions in the future, subject to the availability of resources.

61. Addressing the matter of outstanding contributions to the budget of the Authority, the Secretary-General appealed to the members of the Authority in arrears to promptly pay their contributions. He expressed his appreciation to the host country — Jamaica — for the renovations to the conference facilities of the Authority. He urged all members of the Authority to attend its future sessions.

62. Several delegations welcomed the completion by the Legal and Technical Commission of the draft regulations for cobalt-rich ferromanganese crusts, and the work of the Commission to establish a network of areas of particular environmental interest in the nodule province of the Clarion-Clipperton Zone.

63. Some delegations highlighted the importance of the role of the Authority in the protection of the marine environment of the Area. A view was expressed that each of the three bodies established by the Convention had their own mandates, and that none of the bodies should deliberate on an issue that was in the purview of another body. One delegation welcomed an initiative of the Authority regarding payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles as provided for in article 82 of the Convention.

64. Several delegations emphasized the importance of the Endowment Fund for Marine Scientific Research, and the recent contribution of Norway to the Fund was welcomed. Delegations expressed support for the regional sensitization seminars and acknowledged their role in building capacity, increasing understanding of the resources of the Area and fostering cooperation among States.

65. Some delegations expressed their concern about the level of participation by delegations at the sessions of the Authority notwithstanding the change in the time of the year when its meetings were held and the efforts of the host country to facilitate attendance and to refurbish the conference facilities. The importance of the trust fund to facilitate the participation of developing countries in the work of the

Authority was stressed, with several delegations also urging States to pay any arrears in full.

66. The Meeting took note with appreciation of the information reported by the Secretary-General of the Authority.

# VI. Matters related to the Commission on the Limits of the Continental Shelf

## A. Information reported by the Chairman of the Commission

67. The Chairman of the Commission, Alexandre Tagore Medeiros de Albuquerque, made a statement in which he informed the Meeting of the activities carried out by the Commission since the eighteenth Meeting of States Parties.[5] His statement was based on his letter of 20 April 2009 addressed to the President of the nineteenth Meeting (SPLOS/195).

68. Following the statement by the Chairman, several delegations commended the important work of the Commission. Delegations also expressed gratitude to the Division for Ocean Affairs and the Law of the Sea for the support provided to States in the preparation and deposit of their submissions. They welcomed the recommendations adopted by the Commission and the summaries thereof made available on the website of the Commission.

69. It was noted that Mexico was the first State party to the Convention to have deposited with the Secretary-General charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf, following the prompt adoption by the Commission of the recommendations in relation to its submission in respect of the western polygon in the Gulf of Mexico.[6]

70. Several delegations referred to article 121 and related issues concerning the interpretation of the Convention. Divergent views were expressed with regard to the interpretation of provisions of the Convention that were relevant to the work of the Commission.

71. Some delegations strongly felt that the mandate of the Commission did not allow it to interpret the Convention. It was observed that article 76 of, and Annex II to, the Convention only provided the Commission with a scientific and technical mandate. The composition of the Commission as well as its Rules of Procedure, along with its Scientific and Technical Guidelines,[7] confirmed that conclusion. A particular reference was made to paragraph 3.3.1 of the Scientific and Technical Guidelines, according to which the mandate of the Commission did not extend to the issuance of recommendations with respect to baselines from which the breadth of the territorial sea is measured.

72. A number of ideas on how to address the issue of interpretation were suggested. Some delegations suggested that the Commission might provide the Meeting with a list of legal issues on which it required guidance. Conversely, the

[5] For more information on the work of the Commission during its twenty-second and twenty-third sessions, see CLCS/60 and CLCS/62.

[6] See www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/MEX.htm.

[7] CLCS/11 and Corr.1 and Corr.2, and CLCS/11/Add.1 and Corr.1.

view was expressed that the Commission did not have competence to identify issues of a legal nature in the examination of submissions, which was confirmed by the Chairman of the Commission.

73. The view was expressed that the Commission, when confronted with uncertainties concerning the interpretation of the Convention on issues that might affect the rights and duties of coastal States, should seek the guidance of the Meeting of States Parties, which had the exclusive power to provide such guidance and to decide in which cases the Commission might seek a legal opinion from the Legal Counsel of the United Nations with regard to questions of an administrative nature. Some other delegations did not share that view.

74. Yet other delegations underlined the independent nature of the Commission and its ability to determine the scope of its deliberations in accordance with article 76 of, and Annex II to, the Convention and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea. In that regard, it was pointed out that the work of the Commission should not be encroached upon by the Meeting of States Parties.

75. Some delegations strongly felt that the Meeting of States Parties should seek an advisory opinion from the Tribunal. A view was expressed, however, that the Statute of the Tribunal did not envisage such a possibility.

76. Several delegations reiterated that the Commission should not consider parts of a submission that pertained to areas for which third States had expressed objections, in light of paragraph 3 of article 121. Other delegations reiterated the view that the Commission should deal only with the scientific and technical aspects of the relevant submissions, as it had no competence to interpret the provisions of article 121. The representative from an observer State indicated that the Commission, in accordance with its Rules of Procedure, should refrain from considering a submission, or part thereof, in case of disputes; however, differences in views regarding the application of article 121 did not involve a dispute on sovereignty, but an issue of interpretation of the Convention, and the Commission should avoid delays and consider all scientific and technical aspects of the submissions concerned.

77. Some delegations expressed the view that article 121 created a delicate balance between the interests of coastal States in the exercise of their legitimate rights to delineate the continental shelf and the interests of the international community in the delineation of the Area, as the common heritage of mankind.

78. With regard to the possibility that a third State could formally object to the consideration of a submission, a view was expressed that, in accordance with article 76, paragraph 5, of the Convention and annex I to the Rules of Procedure, the Commission could not disregard such an objection.

79. Reference was made to the Statement of Understanding contained in Annex II to the Final Act of the Third United Nations Conference on the Law of the Sea, which was considered to be applicable in every area in which the scientific criteria contained in the Statement could be satisfied, and did not depend on the geographic location of the State party.

80. The Meeting took note with appreciation of the information reported by the Chairman of the Commission.

## B. Workload of the Commission

81. Following his statement, the Chairman made an informal PowerPoint presentation to the Meeting entitled "Present scenario of the practical difficulties in view of the increased workload of the Commission on the Limits of the Continental Shelf".

82. He began by noting that States had made 51 submissions to the Commission and transmitted 43 sets of preliminary information to the Secretary-General, indicative of the outer limits of their continental shelf beyond 200 nautical miles, in accordance with paragraph 1(a) of the decision taken at the eighteenth Meeting of States Parties (SPLOS/183). Other submissions could be expected in the future.[8]

83. The Chairman observed that a very significant portion of the plenary part of the twenty-fourth and twenty-fifth sessions of the Commission would be devoted to the introduction of new submissions, which could delay the other work of the Commission, in particular the consideration of recommendations. He provided an overview of the participation by the members of the Commission in its subcommissions and offered a projected schedule for consideration of the submissions received to date and for the adoption of recommendations, based on the current working practice of the Commission and availability of its members in the work of the subcommissions. According to that projection, the recommendations regarding the submission made by Cuba, the last submission received by the Commission to date, would be adopted in or about 2030.

84. The Chairman outlined the constraints faced by the Commission, namely the fact that according to rule 51, paragraph 4 bis, of the Rules of Procedure, unless the Commission decides otherwise, only three subcommissions can function simultaneously while considering submissions. Consequently, a new subcommission could only be established once the draft recommendations of a subcommission had been tabled. He also made reference to rule 53, paragraph 1, which provided that, unless the Commission decided otherwise, the recommendations drafted by the subcommission would be considered by the Commission during the session following their submission by the subcommission that had prepared them. He emphasized that, under the current working arrangements, the members of the Commission could not attend the sessions of the Commission for extended periods of time. He then described the acute needs of the Commission, namely longer plenary parts of the Commission sessions; more frequent resumed sessions; three Geographic Information System (GIS) officers; and the reimbursement of loss of income, medical insurance, airline tickets and travel insurance coverage, per diem, accommodation, local transportation, appropriate computer hardware and software

[8] See SPLOS/INF.22. During the nineteenth Meeting of States Parties, the delegation of Argentina objected to the reference used in paragraph 4 of SPLOS/INF.22 with regard to the submission made by the United Kingdom on 11 May 2009. In order to address this concern, as well as the point of view expressed by the delegation of the United Kingdom, documents SPLOS/INF.22/Corr.1 and Corr.2 were issued. As expressed in document SPLOS/199, Argentina also reasserted "its legitimate right of sovereignty over the Malvinas Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas". In document SPLOS/202, the United Kingdom rejected "the claim by the Government of the Argentine Republic to sovereignty over the Falkland Islands and South Georgia and the South Sandwich Islands, and the surrounding maritime areas".

for access to secure Internet sites of the Commission and other reimbursable expenses, including for telephone calls.

85. He reiterated the proposal made by the Commission at the sixteenth Meeting (SPLOS/140, annex), according to which the members should receive emoluments and reimbursement of expenses incurred while they were performing their duties as members of the Commission through the regular budget of the United Nations. As an alternative, the Commission presented a draft decision for consideration by the nineteenth Meeting, contained in the annex to his letter to the President of the Meeting (SPLOS/195) aimed at clarifying the nature and extent of expenses to be covered by the nominating State pursuant to article 2, paragraph 5, of Annex II to the Convention.

86. Several delegations expressed concern over the increased workload faced by the Commission. They felt that the timelines projected by the Chairman for the issuance of recommendations on their respective submissions were of serious concern, especially for developing countries that had overcome major material and financial challenges to make a submission to the Commission within the prescribed time limits. Notably, concern was expressed that it would be difficult to retain the scientific and technical teams that had prepared submissions until the projected time for the establishment of a subcommission to examine them. It was noted that the projections were even more discouraging for coastal States that had only been able to present preliminary information pursuant to the decision contained in document SPLOS/183.

87. Some delegations expressed optimism that the pace at which the Commission would be able to adopt future recommendations would increase as it further developed its experience and practice. It was also noted that the current queue of pending submissions would, in practice, be partially reduced owing to the fact that some submissions could not be examined by the Commission in view of the objections made by third States.

88. A range of potential measures to address the workload of the Commission was discussed. Some delegations suggested that the members of the Commission should receive emoluments and have their costs defrayed through the regular budget of the United Nations while they were performing their duties in the consideration of submissions. Other delegations were of the view that that approach would require an amendment to the Convention, which currently provided that it was for the State party that nominated a member to the Commission to defray the expenses of that member while performing Commission duties. The need to assess the budgetary implications of this proposal for the United Nations was also emphasized. Some delegations informed the Meeting that they were not ready to consider this option. They preferred to focus on further using the trust fund for the purpose of defraying the cost of participation of members from developing States in the meetings of the Commission.

89. According to other delegations the Commission could hold longer and more frequent sessions. In that connection, the possibility of having the Commission continuously in session was suggested.

90. Conversely, other delegations noted that longer or more frequent sessions would pose financial challenges to the States, especially developing States, that nominated members of the Commission and thus had to defray their costs. In that connection,

mention was made of the assistance provided to developing countries by the trust fund. Norway and the Republic of Korea announced the intention to contribute again to the trust fund and invited States that were in a position to do so to also contribute to it. The Director of the Division for Ocean Affairs and the Law of the Sea provided an overview of the current status of the trust fund which, as of May 2009, had a balance of $528,673.19, and expressed gratitude for the contribution made by Ireland.

91. With regard to the length and duration of sessions, the Chairman of the Commission noted that one of the major challenges faced by the Commission under the current working arrangements was that most members of the Commission could not be expected to work full-time for the Commission, or go beyond the current level of work as a result of their other commitments in their respective countries.

92. Proposals were also made as to the structure and composition of subcommissions. Some delegations suggested that the Commission could work by way of smaller subcommissions. The Chairman of the Commission, however, noted that that suggestion would also require an amendment of the Convention, as article 5 of Annex II to the Convention established that subcommissions should be composed of seven members.

93. Several delegations supported a further strengthening of the Division to ensure that it could provide adequate services to the Commission in the light of the increased workload of the latter.

94. Several delegations expressed interest in the proposal made by the Commission (SPLOS/195, annex) to clarify the nature and extent of the expenses to be covered by the nominating State pursuant to article 2, paragraph 5, of Annex II to the Convention. However, they pointed out that the arrangements between members of the Commission and their respective nominating States could not be decided upon by the Meeting of States Parties.

95. The Meeting continued its deliberations on this item in informal consultations coordinated by the Vice-President, Scott Sheeran. Following the informal consultations, the Meeting decided to reflect in the present report the following agreed outcome:

*The Meeting of States Parties*,

1. *Decides* to continue to address the issues related to the workload of the Commission and funding for its members attending the sessions of the Commission and the meetings of the subcommissions as a matter of priority;

2. *Calls upon* States parties whose experts are serving on the Commission to do their utmost to ensure the full participation of those experts in the work of the Commission, in accordance with the Convention;

3. *Also calls upon* States parties to contribute voluntarily to the trust fund, with a view to facilitating the participation of the members of the Commission from developing States in the meetings of the Commission;

4. *Notes* that the nineteenth Meeting of States Parties discussed the proposals made by the Commission, and requests the Secretariat to prepare an update of the note contained in document SPLOS/157, on the basis of the discussions at the nineteenth Meeting of States Parties and any further information provided by States parties and observers, and in due time before the next Meeting, to facilitate a comprehensive review by States parties;

5. *Decides* that the bureau of the nineteenth Meeting of States Parties will facilitate an informal working group to continue consideration of the issues related to the workload of the Commission;

6. *Decides* to take up the issues related to the workload of the Commission at the twentieth Meeting of States Parties under the item entitled "Commission on the Limits of the Continental Shelf: Workload of the Commission".

## VII. Allocation of seats on the Commission on the Limits of the Continental Shelf and the International Tribunal for the Law of the Sea

96. At the invitation of the current President, the President of the eighteenth Meeting informed delegations that during the months preceding the nineteenth Meeting, informal consultations on the allocation of seats on the Commission and the Tribunal had been conducted in a spirit of cooperation among the regional groups concerned. Even though a solution had not been found, he expressed optimism as to the positive outcome of the negotiations on this item.

97. The representative of Norway, on behalf of the Group of Western European and other States, presented a new proposal contained in document SPLOS/L.61.

98. The representative of the Philippines, on behalf of the Group of Asian States, while welcoming this development, reaffirmed support for the principle of equitable geographical distribution, while noting that ratifications of the Convention that had been done since the eighteenth Meeting had further expanded the membership of both the Group of African States and the Group of Asian States.

99. The representative of South Africa, on behalf of the Group of African States, recalled the proposals that had already been made at the seventeenth Meeting and reaffirmed the commitment to adopt a decision on this agenda item at the present Meeting.

100. The Meeting continued its deliberations on this item in informal consultations coordinated by the Vice-President, Eden Charles. Additional informal consultations were also conducted under the coordination of the President. Following these consultations, the Meeting approved the "Arrangement for the allocation of seats on the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf", as contained in document SPLOS/L.61, with amendments (SPLOS/201).

101. According to the agreed arrangement, the allocation of seats on the Tribunal and the Commission shall be in accordance with the relevant provisions of the Convention, providing that no regional group will have fewer than three seats. From the next election, each of these two bodies shall have the following composition: (a) five members from the Group of African States; (b) five members from the Group of Asian States; (c) three members from the Group of Eastern European States; (d) four members from the Group of Latin American and Caribbean States; (e) three members shall be from the Group of Western European and other States; and (f) the remaining one member of each body from among the Group of African States, the Group of Asian States and the Group of Western European and other

States. Furthermore, according to the agreed arrangement, the above provisions do not prejudice or affect future arrangements for elections.

102. After the adoption of the decision, some delegations from the Asian and African Groups stated that while they had accepted the arrangement in a spirit of cooperation and consensus, they remained committed to the principle of equitable geographic distribution.

## VIII. Report of the Secretary-General under article 319 of the United Nations Convention on the Law of the Sea

103. The Meeting had before it the annual report of the Secretary-General on oceans and the law of the sea (A/63/63/Add.1 and A/64/66). Many delegations expressed their appreciation to the Secretary-General and to the Division for Ocean Affairs and the Law of the Sea for the useful and comprehensive report. However, several delegations referred to the time frame for the issuance of the report and pointed out that it did not allow the Meeting of States Parties to discuss up-to-date information under this agenda item.

104. A number of delegations welcomed the States that had become parties to the Convention since the eighteenth Meeting. Some delegations reiterated that the Convention provided the legal framework for all activities in the oceans and seas. Other delegations expressed the need to ensure that the implementation of the Convention was carried out in the interest of all States and humankind, noting, in particular, the balance achieved through the Convention among competing interests and the need for the peaceful use as well as sustainable and equitable management of the Area. They also emphasized the need to enhance international cooperation among all relevant actors, including through the exchange of knowledge and capacity-building.

105. Several delegations referred to their submissions to the Commission or developments relating to their future submissions.

106. Some delegations noted that the work of the Commission was an important step in the establishment of the boundaries between the Area, as the common heritage of mankind, and areas under coastal States' jurisdiction. In that regard, several delegations noted a relationship between articles 76 and 121 of the Convention and cautioned against any encroachment upon the Area as the common heritage of mankind. In their opinion, that relationship should be addressed by the Meeting of States Parties (see para. 14 above). It was underlined that such discussions would not relate to any particular submission to the Commission, but would rather constitute an exchange of views among States parties to clarify certain issues in the context of article 121 and would, therefore, facilitate the work of the Commission. The view was expressed that, in its future work, the Commission should refrain from or postpone discussions of a submission, or a part thereof, should any State raise an objection with respect to its conformity with article 121. At the same time, coastal States were encouraged to implement the rights under article 76, also in light of the principle of good faith prescribed by article 300.

107. The view was reiterated that the mandate of the Commission was limited to scientific and technical issues and, thus, it had no role in interpreting any article of the Convention. Furthermore, when a third State submitted a formal objection to the

consideration by the Commission of a submission or part thereof owing to a dispute, the Commission, in accordance with its Rules of Procedure, could not disregard such an objection. It was stated that the Commission could not seek legal advice from the Secretariat without the approval of the Meeting of States Parties, as the Secretariat did not have the mandate to give such advice to the Convention.

108. Some delegations cautioned against a substantive discussion on article 121, which might lead to reopening discussions on other articles of the Convention and altering its delicate balance. The decision of the nineteenth Meeting to defer discussion of issues relating to article 121 to future meetings did not address the format of such discussions, as States parties could not reach agreement on the latter point.

109. While noting with appreciation the work undertaken by the Commission so far, including measures to improve its efficiency, several delegations expressed their concern about the heavy workload of the Commission and the time frame for consideration of submissions. They urged States parties to take all necessary measures, including interim measures, to enable the Commission to discharge its functions in a timely manner. The latter should also address the expenses of the Commission and strengthening the capacity of the Secretariat to assist it. In that connection, the draft resolution proposed by the Commission, as contained in the annex to document SPLOS/195, was recalled, as well as the need to effectively use the trust fund to defray the costs of participation of the members from developing States. A suggestion was made to consider establishing an intersessional working group to address these issues.

110. In addition, delegations either mentioned or commented on the following issues: the link between sustainable development and the protection and preservation of the marine environment and sustainable management of ocean resources; piracy; illegal, unreported and unregulated fishing, including its link to drug and small arms trafficking; seafarers' rights; possible follow-up to the study on assistance available to, and measures that may be taken by, developing States, in particular the least developed States and small island developing States, as well as coastal African States, to realize the benefits of sustainable and effective development of marine resources and uses of the oceans within the limits of national jurisdiction (A/63/342); capacity-building, including the United Nations-Nippon Foundation Fellowship Programme; and technology transfer.

111. Some delegations reported on developments at the national level regarding assistance given and/or received for the preparation of submissions to the Commission, maritime security, the fulfilment of flag and port States' obligations, settlement of maritime disputes and protection of the marine environment.

112. At the regional and subregional levels, one delegation highlighted the work of the Association of Caribbean States and its Caribbean Sea Commission, in particular in relation to General Assembly resolution 63/214 concerning the sustainable development of the Caribbean Sea for present and future generations. It also noted the benefits of cooperation among regional seas commissions and upcoming cooperation with the International Atomic Energy Agency regarding maritime transport of hazardous material.

113. Some delegations recalled the tenth meeting of the Informal Consultative Process (see A/64/131), which had focused on the implementation of the outcomes

of the Informal Consultative Process including a review of its achievements and shortcomings in its first nine meetings. Some delegations noted the usefulness of the Informal Consultative Process, and expressed support for its continuation. A view was expressed regarding the need for increase support to developing countries to enable their participation in the Informal Consultative Process and for better equitable geographic representation among panellists. It was also observed that future meetings of the Informal Consultative Process should enhance cooperation and coordination and assist States in taking the necessary steps to achieve progress towards sustainable development.

114. As in previous years, divergent views were expressed with regard to the mandate of the Meeting of States Parties to discuss matters of a substantive nature relating to the implementation of the Convention. It was pointed out that the global forum with the mandate to undertake an annual substantive review and evaluation of the implementation of the Convention and other developments relating to ocean affairs and the law of the sea was the General Assembly. Conversely, the view was expressed that the interpretation of General Assembly resolutions on oceans and the law of the sea and on sustainable fisheries could present challenges and that, therefore, the Meeting of States Parties was in the best position to ensure the integrity of the Convention.

115. The Congo and Switzerland expressed satisfaction at their participation in the Meeting following their ratification of the Convention, and reaffirmed their readiness to play a positive role in the institutions created by the Convention.

116. The Meeting took note of the views expressed and decided to include the item "Report of the Secretary-General under article 319 for the information of States parties on issues of a general nature, relevant to States parties, that have arisen with respect to the United Nations Convention on the Law of the Sea" in the provisional agenda for the twentieth Meeting.

## IX. Other matters

### Statement by observer of the Seamen's Church Institute

117. In accordance with rule 18, paragraph 4 of the Rules of Procedure, the representative of the Seamen's Church Institute was invited to address the Meeting as an observer. In his statement, he drew the attention of the Meeting to the dramatic increase in the incidents of piracy and armed robbery off the coast of Somalia and highlighted the numerous efforts that were being taken to address the problem. In particular he noted the insufficient attention paid to the plight of merchant mariners who survived pirate attacks and recommended, inter alia, that nations, international organizations and the maritime industry study the effects of piracy on survivors and create guidelines for seafarers.

### Concluding remarks

118. The President of the Meeting of States Parties made concluding remarks. Among other things, he encouraged States parties to ensure that assessed contributions to the Tribunal and to the International Seabed Authority are paid in full and in a timely fashion, so that these institutions can discharge their functions effectively and efficiently.